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Federal Communications Commission

DA 99-1850

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 99-279
Table of Allotments,	)	RM-9716
FM Broadcast Stations.	)	
(Greeley and Broomfield, Colorado)	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 1, 1999

Released: September 10, 1999

Comment Date: November 1, 1999

Reply Comment Date: November 16, 1999

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Chancellor Media/Shamrock Radio, Licensees L.L.C. ("petitioner"), licensee of Station KVOD-FM, Channel 223C1, Greeley, Colorado, requesting the reallocation of Channel 223C1 from Greeley to Broomfield, Colorado, as that community's first local aural transmission service, and modification of its license accordingly. Petitioner stated its intention to apply for channel 223C1 if it is reallocated to Broomfield, as requested.

2. Petitioner request is filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part ("Change of Community MO&O")*, 5 FCC Rcd 7094 (1990). In support of the proposal petitioner states that the requested reallocation, which is mutually exclusive with its existing authorization at Greeley, would fulfill a higher allotment priority by providing a first local aural service to Broomfield (pop. 24,638),<sup>1</sup> while Greeley (pop. 60,536), an urbanized area, will continue to receive local full-time service provided by Stations KUNC-FM, Channel 218C1, KGLL-FM, Channel 241C1, KFKA-AM and KGRE-AM. Moreover, petitioner asserts that the proposed use of Channel 223C1 at Broomfield is consistent with the technical requirements of Section 73.207(b) of the Commission's Rules as no change in transmitter site is necessary.

3. Additionally, petitioner advises that Station KVOD-FM currently provides a city grade

<sup>1</sup>Population figures reported herein were taken from the 1990 U.S. Census Reports.

(70 dBu) signal over substantial portions of the Denver and Boulder Urbanized Areas. As the requested change in community of license from Greeley to Broomfield does not involve a change in transmitter site to provide service to the latter community, petitioner asserts that a *Tuck* analysis is not required to demonstrate Broomfield's independence from its urban neighbors.<sup>2</sup>

4. A staff engineering analysis has determined that Station KVOD-FM presently provides a 70 dBu signal over 71.9% of the Denver Urbanized Area and 100% of the Boulder Urbanized Area.<sup>3</sup> The reallocation proposal will increase the degree of coverage to the Denver urbanized area by 12%. Based upon the degree of coverage presently provided by Station KVOD-FM over the noted urbanized areas, we find that the petitioner's reallocation request is not subject to the provision of additional information to demonstrate Broomfield's independence from the urbanized areas.

5. We also note that according to petitioner's engineering Exhibit 1, the authorized site of Station KVOD-FM is short-spaced to the licensed site of Station KJMN(FM), Channel 221C2, Castle Rock, Colorado, which was authorized under Section 73.215 of the Commissions' Rules. Therefore, to assure compliance with Section 73.207(b)(1), petitioner has proposed a fully-spaced reference site for Channel 223C1 for allotment purposes, located 15 kilometers from Broomfield at coordinates 40-03-15 NL and 105-04-12 WL. Therefore, we are designating that reference site for purposes of this rule making proceeding. *See Princeton and Elk River, Minnesota*, 13 FCC Rcd 22806 (1998). As the 70 dBu signal of a Class C1 station will extend 50 kilometers, the reference site for Channel 223C1 will comply with the requirements of Section 73.315 of the Commission's Rules. However, as the reallocation proposal requires a change from the petitioner's currently authorized site, it is requested to provide a gain and loss study for Channel 223C1 at Broomfield, based on the fully-spaced allotment reference coordinates proposed herein. The requested data should also include the total reception services that are now available within the gain and loss areas.

6. In consideration of the above, we believe that the petitioner's proposal warrants consideration as the reallocation request could provide Broomfield with its first local aural transmission service without depriving Greeley of local aural transmission service. Therefore, we shall propose to modify the petitioner's license for Station KVOD-FM to specify Broomfield as its community of license. Pursuant to the provisions of Section 1.420(i) of the Commission's

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<sup>2</sup>*See Huntington Broadcasting Co. v. F.C.C.*, 192 F.2d 33 (D.C. Cir. 1951), *RKO General, Inc. ("KFRC")*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck ("Tuck")*, 3 FCC Rcd 5374 (1988). In *KFRC* and *Tuck*, the Commission clarified the type of evidence to consider in determining whether a suburban community deserves a first local service preference by relying on three factors: signal population coverage; size of the suburban community relative to the adjacent community; and the interdependence of the suburban community with the central city.

<sup>3</sup>Our engineering analysis reveals that Station KVOD currently provides a 70 dBu signal over the additional urbanized areas of Longmont (100%) and Fort Collins (19.6%). The reallocation proposal would decrease the 70 dBu coverage to the Fort Collins urbanized area by approximately 12%.

Rules, we will not accept competing expressions of interest in the use of Channel 223C1 at Broomfield, Colorado, or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

7. Channel 223C1 can be allotted to Broomfield in conformity with the requirements of Section 73.207(b)(1) of the Commission's Rules at the petitioner's specified allotment reference site located 15.5 kilometers (9.6 miles) north of the community at coordinates 40-03-15 NL and 105-04-12 WL.

8. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Broomfield, Colorado	--	223C1
Greeley, Colorado	223C1, 241C1	241C1

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before November 1, 1999 , and reply comments on or before November 16, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Kevin C. Boyle, Esq.  
Trena L. Klohe, Esq.  
Latham & Watkins  
1001 Pennsylvania Avenue, N.W.  
Suite 1300  
Washington, DC 20004

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

### APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.